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IN THE

SUPREME COURT OF THE

UNITED STATES

October Term 1965

No. 660

KENNETH L. JONES, ADMINISTRATOR

of the

ESTATE OF JOSEPH BALL, DECEASED

Petitioner

-vs-

THE UNITED STATES

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered April 12, 1965 and denial of Motion for Amendment of court order July 16, 1965 entered in the above-entitled case.

Jurisdiction

The judgment of the Court of Claims was entered on April 12, 1965 without oral Argument, it was concluded that plaintiff's claim was barred by the statute of limitations. (28 U.S.C. 2501) The motion for amendment of Court Order was denied on July 16, 1965. The jurisdiction of this court is invoked under 28 U.S.C. 1255 (1).

Questions Presented

Whether the Act of April 28, 1796 (1 Stat. 485) affects, amends or repeals, or changes the terms and conditions of (Sec. 3 & 4, 13 & 15) of the Act of August 4, 1790 (Vol. 1 P. 138) and whether petitioner's claim is barred by 28 U.S.C. 2501?

Constitutional Provision Involved

Nor shall any person be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation (U.S. Const. Amend. 5.) The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. (U. S. Const. Amend (XIV Sec. 4) The Funding Act of August 4, 1790 (Vol. 1 P. 138) Sec. 3 and 4. (See Appendix A)

Statement

This suit was brought by petitioner in the Court of Claims under (The Funding Act of August 4, 1790) as contained in the Statutes at Large (Vol. 1 P. 138) for the payment of unpaid interest which, is payable on demand and, not the principal which, is to be paid at the pleasure of the

United States of America. The amount of the principal is $32,282.95 of stock authorized and issued by the United States of America, which is due the Estate of Joseph Ball deceased. The respondent asserted the Statute of Limitations as its defense. (See Act of April 28, 1796 (1 Stat. 458) (Act of March 3, 1863 (12 Stat. 767) (28 U.S.C. 2501)

That defense is expressly barred by Shepard's Table of Federal Acts of 1964 Entitled (The Funding Acts) August 4, 1790 C. 34 (1 Stat. 138) (Feb. 25, 1862 C. 33 (12 Stat. 345) (July 14, 1870 C. 256) (16 Stat. 272) Jan. 25, 1879 C. 24 (20 Stat. 265) Feb. 26. 1879 C. 102 (20 Stat. 321) March 14, 1900 C. 41 (31 Stat. 45)

These Acts were to refund the floating debt of the United States, such as, The loan of 1790 approved Aug. 4, 1790 Sec. 3 and 4, But does not change the terms of the said Act.

The index of the Federal Statutes, general and permanent law from 1789 to 1873 together with the table of repeals and amendments does not cite the Act of April 28, 1796 (1 Stat. 458) as a part of, amending or, affecting or, repealing the Act of August 4, 1790 in any way. The index cites the Act of August 4, 1790, and the terms thereof in full force and virtue in 1873.

The (History of the Currency of the Country and of the Loans of The United States) from the earliest period to June 30, 1896 prepared by William F. DeKnight, under the direction of J. Fount Tillman, Register of the Treasury of the United States (Treasury Dept. Doc. No. 1943) Office of the Register. (Appendix B) DeKnights' History (P. 33) as was prepared, under the direction of the Register of the Treasury, cites the terms of the Loan of 1790, Approved August 4, 1790 (Sec. 3, 4, 13, and 15) The length of loan indefinite; redeemable by payments not to exceed 8 percent per annum! Who would know the terms of a stock issue, that was issued by the United States Treasury Department, any better than the Register of the U. S. Treasury?

The table of Repeals and Amendments to the Federal Statutes proves by the law, that the Act of April 28, 1796 (1 Stat. 458) does not affect the Act of August 4, 1790 as setting a date of maturity on the loan of 1790, so therefore the Act of March 3, 1863 Sec. 10 (12 Stat. 767) and 28 U.S.C. 2501 are expressly barred, and the Statute of Limitations does not apply to petitioner's claim.

Reasons for Granting the Writ

The importance of the question

One of the great debates of the United States Congress assembled of 1790, concerned the importance of the public Credit and, the existing debt of the new nation, being a debt that was made, to establish America its freedom. (U.S. Constitution Amend. 14 Sec. 4) Under that provision, the validity of the public debt of the United States, authorized by law, shall not be questioned.

(Alexander Hamilton's Report to Congress (American State Papers Vol. I 1st Cong. No. 6 2D Session) That loans in times of public danger, especially from foreign war, are found an indespensable resource, even to the Wealthiest nation; and that, in a country which, like this, is possesed of little Active Wealth, or in other words, little moneyed Capitol; the necessity for that resource must in such emergencies be proportionably urgent; and as on the one hand, the necessity for borrowing, in particular emergencies cannot be doubted; so on the other, it is equally evident that to be able to borrow upon good terms, it is essential that the credit of a nation should be well established.

For when the credit of a country is in any degree questionable, it never fails to give an extravagant premium upon all the loans it has occasion to make. From this constant necessity of borrowing and buying dear, it is easy to conceive how immensly the expenses of a nation in a course of time will be by an unsound state of the public credit.-

Claims presented by petitioner is a part of the public debt authorized by law being a part of the first loan and funding act of the new government of United States of America, and therefore should not be questioned; and is an important question of federal law which has not been, but should be settled by the United States Supreme Court. The decision of this court will have a reflection upon the public credit of today.

Joseph Ball was a resident of Philadelphia, Pennsylvania and, deceased April 21, 1821 in Philadelphia, Pennsylvania. During his lifetime he purchased U. S. Stock that was authorized by the Funding Act of August 4, 1790. The Estate of Joseph Ball and, the heirs of Joseph Ball have been deprived of their Constitutional rights. (U. S. Const. Amend. V) Nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for

public use without just compensation. As the administrator of the Estate of Joseph Ball I have been denied a hearing and the right to be heard by a court.

In the Federal Code Annotated (Civil Remedies and Proceedings in General P. 482. A. 14 Sec. 1) The Due Process Clause in its procedural sense is a guarantee that, before one may be deprived of property, a hearing must be had before a judicial or quasi-judicial body according to established rules of law. (Morris Plan. Co. V. State, 73 Cal. App. (2d Series) 415, 166 Pac. (2D) 627

(Amend. 14 Sec. 1 P. 482) The right to notice and a hearing is one of ancient origin, and by the Due Process Clauses has been safe-guarded to all against deprivation by the federal and State governments. In Re (Central R. Co. (CCA3) 136 F (2D) 633

(Amend. 14 Sec. 1 P. 482) The Constitutional guarantee of due process of law is intended to protect the individual against the arbitrary exercise of government power and to secure equal protection of the law to all. LaPorte v. Bitker (DC-WIS) 55 FSU PP 882 AFF'd 145 F (2D) 445; Veron v. State 245 ALA 633, 18 SO (2D) 388.

Due Process of Law means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing. Garrett v. Reid 244 Ala. 254. 13 SO (2D) 97.

(Amend. 14 Sec. 1 P. 483) A court cannot deprive one who is not in default of a right of a right to be heard. Dolan v. Roy, 286 Mass. 519, 190 NE 717.

(Amend. 5 P. 155) As the Due Process Clauses of the federal Constitution safeguard private property against a taking for public use without just compensation, neither nation nor state may require the use of privately owned property without just compensation. California Water and Telephone Co. v. Railroad Commission, (DC—CAL) 19 FSU PP11.

Conclusion

Whether or not the Act of April 28, 1796 (1 Stat. 458) affects, amends or repeals, or changes the terms and conditions of (Sec. 3 & 4, 13 & 15) of the Act of August 4, 1790 (Vol. I P. 138) and whether petitioner's claim is barred by 28 U.S.C. 2501?

Is it constitutional that the United States of America has a right to put a limitation upon the public debt without the consent of the holder or holders of such securities that, constitute a part of the public debt?

For all the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth L. Jones

KENNETH L. JONES, Administrator
of the Estate of Jospeh Ball, deceased
9076 Madison Rd., Middletown, Ohio

APPENDIX A

The Funding Act of August 4, 1790 Sec. 3. Be it therefore further enacted, that a loan to the full amount of the said domestic debt be, and the same is hereby proposed; and that books for receiving subscriptions to the said loan be opened at the treasury of the United States, and by a commissioner to be appointed in each of the said states, on the first day of October next, to continue open until the last day of September following inclusively; and that the sums which shall be subscribed thereto, be payable in certificates issued for the said debt, according to their specie value, and computing the interest upon such as bear interest to the last day of December next, inclusively; which said certificates shall be of these several descriptions, to wit:

Those issued by the register of the treasury.

Those issued by the commissioners of loans in the several states, including certificates given pursuant to the act of Congress of the second of January; one thousand seven hundred and seventy-nine, for bills of credit of the several emissions of the twentieth of May, one thousand seven hundred and seventy-seven, and the eleventh of April, one thousand seven hundred and seventy-eight.

Those issued by the commissioners for the adjustment of the account of the quartermaster, commissary, hospital, clothing, and marine departments.

Those issued by the commissioners for the adjustment of accounts in the respective states.

Those issued by the late and present paymaster-general, or commissioner of Army accounts.

Those issued for the payment of interest commonly called indents of interest.

And on the bills of credit issued by the authority of the United States in Congress assembled, at the rate of one hundred dollars in the said bills for one dollar in specie.

Sec. 4 And be it further enacted, that for the whole or any part of any sum subscribed to the said loan by any person or persons, or body politic, which shall be paid in the principal of the said domestic debt, the subscriber or subscribers shall be entitled to a certificate, purporting that the United States owe to the holder or holders thereof, his, her, or their assigns a sum to be expressed therein, equal

to two thirds of the sum so paid, bearing an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payments not exceeding in one year, on account both of principal and interest the proportion of eight dollars upon a hundred of the sum mentioned in such certificate; and to another certificate purporting that the United States owe to the holder or holders thereof, his, her or their assigns, a sum to be exprsesed therein, equal to the proportion of thirty-three dollars and one third of a dollar upon a hundred, of the sum so paid, which after the year one thousand eight hunded shall bear an interest of six per centum per annum, payable quarter yearly, and subject to redemption by payment not exceeding in one year, on account both of principal and interest, the proportion of eight dollars upon a hundred of the sum mentioned in such certificate: Provided, That it shall not be understood that the United States shall be bound or obliged to redeem in the proportion aforesaid; but it shall be understood only that they have a right so to do.

APPENDIX B

HISTORY
of the
CURRENCY OF THE COUNTRY AND OF THE LOANS OF THE UNITED STATES
from the
Earliest Period to June 30, 1896

prepared by
WILLIAM F. DE KNIGHT
(Office of the Register)
Under the direction of
J. FOUNT TILLMAN,
Register of the Treasury

WASHINGTON:
Government Printing Office.
1897.

TREASURY DEPARTMENT,
Document No. 1943.
Office of the Register.

HISTORY OF THE CURRENCY OF THE COUNTRY.

(page 33)

tions made by the act. The contract for the loan provided for its repayment upon similar terms as the preceding loan from the Bank of New York, the revenues derived from duties on imports and tonnage being pledged for its redemption. The money was needed for the compensation of Members and employees of the Congress, the payment of the salaries of the civil list, etc., and of arrears of interest on the Dutch loans.

There was in the Treasury at the time a sum not exceeding $50,000.

HOLLAND LOAN OF 1790. (ACTS OF AUGUST 4 AND 12, 1790, SECTIONS 2 AND 4, RESPECTIVELY.)

Length of loan, ten to fifteen years; redeemable by lot, in five equal annual installments, from February 1, 1800; amount authorized, $14,000,000; amount issued, $1,200,000; sold at par (Bayley, considering commission and expenses, says "sold at 95½ per cent."); interest, 5 per cent., payable annually; first issue, first calendar quarter of 1790; final redemption, first calendar quarter of 1804.

The act of August 4, 1790, authorized a loan of not exceeding $12,000,000, to be applied to paying, in whole or in part, the foreign debt of the United States. The act of August 12, 1790, authorized a loan of not exceeding $2,000,000, to be applied to the purchase of the debt of the United States; rate of interest, in the first instance not limited, in the second not to exceed 5 per cent. The charges for commission and expenses were fixed by contract at 4½ per cent. on the principal.

SIX PER CENT., THREE PER CENT., AND DEFERRED SIX PER CENT. STOCKS OF 1790.

(ACT OF AUGUST 4, 1790, SECTIONS 3, 4, 13 AND 15.)

Length of loans, indefinite; redeemable by payments not to exceed 8 per cent. per annum; amount authorized, indefinite; amount issued, of Six per cents., $30,088,397.75, of Three per cents., $19,719,237.39, of Deferred six per cents, $14,649,328.76; total, $64,456,963.90; sold at par; interest, 6 and 3 per cent., payable quarterly; first issue, Six per cents.,

(page 33, continued)

January 1, 1791; Three and Deferred six per cents., January 1, 1800. Amount outstanding June 30, 1896, $27,869.77, $13,953.13, and $13,934.90, respectively; total $55,757.80.

These loans provide for the funding of the domestic debt. Subscriptions were to consist of the certificates issued under the authority of the Continental Congress, and by the respective States, the same to be received at rates scaled greatly below their face value. The amount outstanding is included in the Finance Report under the title of "Old Debt."

Of the Three per cents., in 1807 and 1808, $2,861,309.15 was redemed by $1,859,850.70 of the Converted six per cent. stock of 1807, the discount amounting to $1,001,458.45. Of the Six per cents. and Deferred six per cents., in 1807 and 1808, $6,294,051.12 was redeemed by an issue of Exchanged six per cent. stock of 1807, and in 1812 and 1813, $2,984,746.72 by an isue of Exchanged six per cent. stock of 1812, at par; total, $9,278,797.84.

COPY OF OBLIGATION.

Six per cent. stock of 1790.

(No. ....) United States Loan Office,

State of ...., ..., 17...

Be it known, that there is due from the United States of America unto ..... or ..... assigns, the sum of ....., bearing interest at six per cent. per annum, from the first day of January, 1791, inclusively, payable quarter-yearly, and subject to redemption by payments, not exceeding in one year, on account both of principal and interest, the proportion of Eigh Dollars upon a Hundred of the stock bearing interest at six per cent.; created by virtue of an act, making provision for the debt of the United States, passed on the fourth day of August, 1790, which debt is recorded in this office, and is transferable only by appearance in person, or by attorney, at the proper office, acording to the rules and forms instituted for that purpose.

.... Dollars. ....

IN THE UNITED STATES COURT OF CLAIMS

No. 184-64

KENNETH L. JONES, ADMINISTRATOR OF THE ESTATE OF JOSEPH BALL, DECEASED

v.

THE UNITED STATES

ORDER

This case comes before the court on defendant's motion for summary judgment. Upon consideration thereof, together with the opposition thereto, and without oral argument, it is concluded that plaintiff's alleged claim is barred by the statute of limitations, 28 U. S. C. § 2501, and

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, and plaintiff's petition is dismissed.

BY THE COURT

Wilson Cowen
Chief Judge